

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CYNDI LYNN SHUTE
a.k.a. CYNTHIA LYNN SHUTE
a.k.a. CYNTHIA LYNN HESS
a.k.a. CYNTHIA LYNN EMORY
P.O. Box 6304
Lancaster, CA 93539

Registered Nurse License No. 599307

Respondent

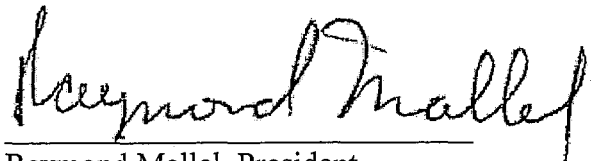
Case No. 2013-146

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **May 3, 2013.**

IT IS SO ORDERED **April 4, 2013.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 THOMAS L. RINALDI
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Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2013-146

11 **CYNDI LYNN SHUTE, AKA CYNTHIA**
12 **LYNN SHUTE, AKA CYNTHIA LYNN**
13 **HESS, AKA CYNTHIA LYNN EMORY**
14 **P.O. Box 6304**
Lancaster, CA 93539
Registered Nurse License No. 599307

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of
21 Registered Nursing. She brought this action solely in her official capacity and is represented in
22 this matter by Kamala D. Harris, Attorney General of the State of California, by Thomas L.
23 Rinaldi, Deputy Attorney General.

24 2. Respondent Cyndi Lynn Shute, aka Cynthia Lynn Shute, aka Cynthia Lynn Hess, aka
25 Cynthia Lynn Emory (Respondent) is representing herself in this proceeding and has chosen not
26 to exercise her right to be represented by counsel.

3. On or about May 13, 2002, the Board of Registered Nursing issued Registered Nurse License No. 599307 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2013-146 and will expire on August 31, 2013, unless renewed.

JURISDICTION

4. Accusation No. 2013-146 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 4, 2012. Respondent timely filed her Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 2013-146 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2013-146. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 2013-146.

10. Respondent agrees that her Registered Nurse License is subject to discipline and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 599307 issued to Respondent is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

3. **Report in Person.** Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

1 **4. Residency, Practice, or Licensure Outside of State.** Periods of residency or
2 practice as a registered nurse outside of California shall not apply toward a reduction of this
3 probation time period. Respondent's probation is tolled, if and when she resides outside of
4 California. Respondent must provide written notice to the Board within 15 days of any change of
5 residency or practice outside the state, and within 30 days prior to re-establishing residency or
6 returning to practice in this state.

7 Respondent shall provide a list of all states and territories where she has ever been licensed
8 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
9 information regarding the status of each license and any changes in such license status during the
10 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing
11 license during the term of probation.

12 **5. Submit Written Reports.** Respondent, during the period of probation, shall submit
13 or cause to be submitted such written reports/declarations and verification of actions under
14 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
15 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
16 Respondent shall immediately execute all release of information forms as may be required by the
17 Board or its representatives.

18 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
19 state and territory in which she has a registered nurse license.

20 **6. Function as a Registered Nurse.** Respondent, during the period of probation, shall
21 engage in the practice of registered nursing in California for a minimum of 24 hours per week for
22 6 consecutive months or as determined by the Board.

23 For purposes of compliance with the section, "engage in the practice of registered nursing"
24 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
25 non-direct patient care position that requires licensure as a registered nurse.

26 The Board may require that advanced practice nurses engage in advanced practice nursing
27 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

28 If Respondent has not complied with this condition during the probationary term, and

1 Respondent has presented sufficient documentation of her good faith efforts to comply with this
2 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
3 extension of Respondent's probation period up to one year without further hearing in order to
4 comply with this condition. During the one year extension, all original conditions of probation
5 shall apply.

6 7. **Employment Approval and Reporting Requirements.** Respondent shall obtain
7 prior approval from the Board before commencing or continuing any employment, paid or
8 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
9 performance evaluations and other employment related reports as a registered nurse upon request
10 of the Board.

11 Respondent shall provide a copy of this Decision to her employer and immediate
12 supervisors prior to commencement of any nursing or other health care related employment.

13 In addition to the above, Respondent shall notify the Board in writing within seventy-two
14 (72) hours after she obtains any nursing or other health care related employment. Respondent
15 shall notify the Board in writing within seventy-two (72) hours after she is terminated or
16 separated, regardless of cause, from any nursing, or other health care related employment with a
17 full explanation of the circumstances surrounding the termination or separation.

18 8. **Supervision.** Respondent shall obtain prior approval from the Board regarding
19 Respondent's level of supervision and/or collaboration before commencing or continuing any
20 employment as a registered nurse, or education and training that includes patient care.

21 Respondent shall practice only under the direct supervision of a registered nurse in good
22 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
23 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
24 approved.

25 Respondent's level of supervision and/or collaboration may include, but is not limited to the
26 following:

27 (a) Maximum - The individual providing supervision and/or collaboration is present in
28 the patient care area or in any other work setting at all times.

1 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
2 care unit or in any other work setting at least half the hours Respondent works.

3 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
4 person communication with Respondent at least twice during each shift worked.

5 (d) Home Health Care - If Respondent is approved to work in the home health care
6 setting, the individual providing supervision and/or collaboration shall have person-to-person
7 communication with Respondent as required by the Board each work day. Respondent shall
8 maintain telephone or other telecommunication contact with the individual providing supervision
9 and/or collaboration as required by the Board during each work day. The individual providing
10 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
11 patients' homes visited by Respondent with or without Respondent present.

12 9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any
13 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,
14 or for an in-house nursing pool.

15 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
16 registered nursing supervision and other protections for home visits have been approved by the
17 Board. Respondent shall not work in any other registered nursing occupation where home visits
18 are required.

19 Respondent shall not work in any health care setting as a supervisor of registered nurses.
20 The Board may additionally restrict Respondent from supervising licensed vocational nurses
21 and/or unlicensed assistive personnel on a case-by-case basis.

22 Respondent shall not work as a faculty member in an approved school of nursing or as an
23 instructor in a Board approved continuing education program.

24 Respondent shall work only on a regularly assigned, identified and predetermined
25 worksite(s) and shall not work in a float capacity.

26 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
27 request documentation to determine whether there should be restrictions on the hours of work.
28

1 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and
2 successfully complete a course(s) relevant to the practice of registered nursing no later than six
3 months prior to the end of her probationary term.

4 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
5 Respondent shall submit to the Board the original transcripts or certificates of completion for the
6 above required course(s). The Board shall return the original documents to Respondent after
7 photocopying them for its records.

8 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its
9 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
10 amount of \$8,358. Respondent shall be permitted to pay these costs in a payment plan approved
11 by the Board, with payments to be completed no later than three months prior to the end of the
12 probation term.

13 If Respondent has not complied with this condition during the probationary term, and
14 Respondent has presented sufficient documentation of her good faith efforts to comply with this
15 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
16 extension of Respondent's probation period up to one year without further hearing in order to
17 comply with this condition. During the one year extension, all original conditions of probation
18 will apply.

19 12. **Violation of Probation.** If Respondent violates the conditions of her probation, the
20 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
21 and impose the stayed discipline (revocation/suspension) of Respondent's license.

22 If during the period of probation, an accusation or petition to revoke probation has been
23 filed against Respondent's license or the Attorney General's Office has been requested to prepare
24 an accusation or petition to revoke probation against Respondent's license, the probationary
25 period shall automatically be extended and shall not expire until the accusation or petition has
26 been acted upon by the Board.

27 13. **License Surrender.** During Respondent's term of probation, if she ceases practicing
28 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,

1 Respondent may surrender her license to the Board. The Board reserves the right to evaluate
2 Respondent's request and to exercise its discretion whether to grant the request, or to take any
3 other action deemed appropriate and reasonable under the circumstances, without further hearing.
4 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be
5 subject to the conditions of probation.

6 Surrender of Respondent's license shall be considered a disciplinary action and shall
7 become a part of Respondent's license history with the Board. A registered nurse whose license
8 has been surrendered may petition the Board for reinstatement no sooner than the following
9 minimum periods from the effective date of the disciplinary decision:

10 (1) Two years for reinstatement of a license that was surrendered for any reason other
11 than a mental or physical illness; or

12 (2) One year for a license surrendered for a mental or physical illness.

13 14. **Physical Examination.** Within 45 days of the effective date of this decision,
14 respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician
15 assistant, who is approved by the Board before the assessment is performed, submit an
16 assessment of the respondent's physical condition and capability to perform the duties of a
17 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
18 medically determined, a recommended treatment program will be instituted and followed by the
19 respondent with the physician, nurse practitioner, or physician assistant providing written reports
20 on forms provided by the Board.

21 15. **Participate in Treatment/Rehabilitation Program for Chemical Dependence.**
22 Respondent, at her expense, shall successfully complete during the probationary period or shall
23 have successfully completed prior to commencement of probation a Board-approved
24 treatment/rehabilitation program of at least six months duration. As required, reports shall be
25 submitted by the program on forms provided by the Board. If Respondent has not completed a
26 Board-approved treatment/rehabilitation program prior to commencement of probation,
27 Respondent, within 45 days from the effective date of the decision, shall be enrolled in a program.
28 If a program is not successfully completed within the first nine months of probation, the Board

1 shall consider Respondent in violation of probation.

2 Based on Board recommendation, each week Respondent shall be required to attend at least
3 one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous,
4 Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board.
5 If a nurse support group is not available, an additional 12-step meeting or equivalent shall be
6 added. Respondent shall submit dated and signed documentation confirming such attendance to
7 the Board during the entire period of probation. Respondent shall continue with the recovery plan
8 recommended by the treatment/rehabilitation program or a licensed mental health examiner
9 and/or other ongoing recovery groups.

10 16. **Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent shall
11 completely abstain from the possession, injection or consumption by any route of all controlled
12 substances and all psychotropic (mood altering) drugs, including alcohol, except when the same
13 are ordered by a health care professional legally authorized to do so as part of documented
14 medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14)
15 days, by the prescribing health professional, a report identifying the medication, dosage, the date
16 the medication was prescribed, the Respondent's prognosis, the date the medication will no
17 longer be required, and the effect on the recovery plan, if appropriate.

18 Respondent shall identify for the Board a single physician, nurse practitioner or physician
19 assistant who shall be aware of Respondent's history of substance abuse and will coordinate and
20 monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-
21 altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report
22 to the Board on a quarterly basis Respondent's compliance with this condition. If any substances
23 considered addictive have been prescribed, the report shall identify a program for the time limited
24 use of any such substances.

25 The Board may require the single coordinating physician, nurse practitioner, or physician
26 assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive
27 medicine.

1 17. **Submit to Tests and Samples.** Respondent, at her expense, shall participate in a
2 random, biological fluid testing or a drug screening program which the Board approves. The
3 length of time and frequency will be subject to approval by the Board. Respondent is responsible
4 for keeping the Board informed of Respondent's current telephone number at all times.
5 Respondent shall also ensure that messages may be left at the telephone number when she is not
6 available and ensure that reports are submitted directly by the testing agency to the Board, as
7 directed. Any confirmed positive finding shall be reported immediately to the Board by the
8 program and Respondent shall be considered in violation of probation.

9 In addition, Respondent, at any time during the period of probation, shall fully cooperate
10 with the Board or any of its representatives, and shall, when requested, submit to such tests and
11 samples as the Board or its representatives may require for the detection of alcohol, narcotics,
12 hypnotics, dangerous drugs, or other controlled substances.

13 If Respondent has a positive drug screen for any substance not legally authorized and not
14 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board
15 files a petition to revoke probation or an accusation, the Board may suspend Respondent from
16 practice pending the final decision on the petition to revoke probation or the accusation. This
17 period of suspension will not apply to the reduction of this probationary time period.

18 If Respondent fails to participate in a random, biological fluid testing or drug screening
19 program within the specified time frame, Respondent shall immediately cease practice and shall
20 not resume practice until notified by the Board. After taking into account documented evidence
21 of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may
22 suspend Respondent from practice pending the final decision on the petition to revoke probation
23 or the accusation. This period of suspension will not apply to the reduction of this probationary
24 time period.

25 18. **Mental Health Examination.** Respondent shall, within 45 days of the effective date
26 of this Decision, have a mental health examination including psychological testing as appropriate
27 to determine her capability to perform the duties of a registered nurse. The examination will be
28 performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by

1 the Board. The examining mental health practitioner will submit a written report of that
2 assessment and recommendations to the Board. All costs are the responsibility of Respondent.
3 Recommendations for treatment, therapy or counseling made as a result of the mental health
4 examination will be instituted and followed by Respondent.

5 If Respondent is determined to be unable to practice safely as a registered nurse, the
6 licensed mental health care practitioner making this determination shall immediately notify the
7 Board and Respondent by telephone, and the Board shall request that the Attorney General's
8 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
9 practice and may not resume practice until notified by the Board. During this period of
10 suspension, Respondent shall not engage in any practice for which a license issued by the Board
11 is required, until the Board has notified Respondent that a mental health determination permits
12 Respondent to resume practice. This period of suspension will not apply to the reduction of this
13 probationary time period.

14 If Respondent fails to have the above assessment submitted to the Board within the 45-day
15 requirement, Respondent shall immediately cease practice and shall not resume practice until
16 notified by the Board. This period of suspension will not apply to the reduction of this
17 probationary time period. The Board may waive or postpone this suspension only if significant,
18 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
19 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
20 Only one such waiver or extension may be permitted.

21 **19. Therapy or Counseling Program.** Respondent, at her expense, shall participate in
22 an on-going counseling program until such time as the Board releases her from this requirement
23 and only upon the recommendation of the counselor. Written progress reports from the counselor
24 will be required at various intervals.

25 ///

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1 ACCEPTANCE

2 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
3 stipulation and the effect it will have on my Registered Nurse License. I enter into this
4 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
5 to be bound by the Decision and Order of the Board of Registered Nursing.

6
7 DATED: 1/21/13



8 CYNDI LYNN SHUTE, AKA CYNTHIA LYNN
9 SHUTE, AKA CYNTHIA LYNN HESS, AKA
10 CYNTHIA LYNN EMORY
Respondent

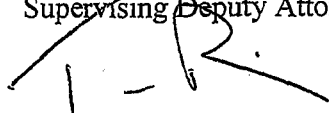
11 ENDORSEMENT

12 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
13 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
14 Affairs.

15
16 Dated: 1-30-2013

Respectfully submitted,

17 KAMALA D. HARRIS
Attorney General of California
18 KAREN B. CHAPPELLE
Supervising Deputy Attorney General

19
20 
21 THOMAS L. RINALDI
Deputy Attorney General
Attorneys for Complainant

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25 LA2012506717
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Exhibit A

Accusation No. 2013-146

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 THOMAS L. RINALDI
Deputy Attorney General
4 State Bar No. 206911
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2541
6 Facsimile: (213) 897-2804
Attorneys for Complainant

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13 **HESS, AKA CYNTHIA LYNN EMORY**
14 **P.O. Box 6304**
Lancaster, CA 93539

A C C U S A T I O N

15 **Registered Nurse License No. 599307**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about May 13, 2002, the Board of Registered Nursing issued Registered Nurse
24 License Number 599307 to Cyndi Lynn Shute, aka Cynthia Lynn Shute, aka Cynthia Lynn Hess,
25 aka Cynthia Lynn Emory (Respondent). The Registered Nurse License was in full force and
26 effect at all times relevant to the charges brought herein and will expire on August 31, 2013,
27 unless renewed.
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1 7. Section 2762 of the Code states:

2 "In addition to other acts constituting unprofessional conduct within the meaning of this
3 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
4 chapter to do any of the following:

5 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
6 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
7 administer to another, any controlled substance as defined in Division 10 (commencing with
8 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
9 defined in Section 4022.

10 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
11 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
12 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
13 himself or herself, any other person, or the public or to the extent that such use impairs his or her
14 ability to conduct with safety to the public the practice authorized by his or her license.

15 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
16 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
17 or the possession of, or falsification of a record pertaining to, the substances described in
18 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
19 thereof.

20 "(d) Be committed or confined by a court of competent jurisdiction for intemperate use of
21 or addiction to the use of any of the substances described in subdivisions (a) and (b) of this
22 section, in which event the court order of commitment or confinement is prima facie evidence of
23 such commitment or confinement.

24 "(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any
25 hospital, patient, or other record pertaining to the substances described in subdivision (a) of this
26 section."
27
28

1 8. Section 490 states, in pertinent part:

2 "(a) In addition to any other action that a board is permitted to take against a licensee, a
3 board may suspend or revoke a license on the ground that the licensee has been convicted of a
4 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
5 or profession for which the license was issued.

6 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
7 discipline a licensee for conviction of a crime that is independent of the authority granted under
8 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
9 of the business or profession for which the licensee's license was issued.

10 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
11 conviction following a plea of nolo contendere. Any action that a board is permitted to take
12 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
13 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
14 made suspending the imposition of sentence, irrespective of a subsequent order under the
15 provisions of Section 1203.4 of the Penal Code."

16 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
17 administrative law judge to direct a licentiate found to have committed a violation or violations of
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case.

20 10. Section 118, subdivision (b), of the Code provides that the
21 suspension/expiration/surrender/cancellation of a license shall not deprive the
22 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
23 within which the license may be renewed, restored, reissued or reinstated.

24 DANGEROUS DRUGS/CONTROLLED SUBSTANCES

25 11. Hydromorphone is a Schedule II controlled substance pursuant to Health and Safety
26 Code section 11055(b)(1)(J) and a dangerous drug pursuant to Business and Professions Code
27 section 4022.

28

1 12. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code
2 section 11055(b)(1)(M) and a dangerous drug pursuant to Business and Professions Code section
3 4022.

4 13. Hydrocodone is a Schedule II controlled substance pursuant to Health and Safety
5 Code section 11055(b)(1)(I) and a dangerous drug pursuant to Business and Professions Code
6 section 4022.

7 14. Clonazepam is a Schedule IV controlled substance pursuant to Health and Safety
8 Code section 11057(d)(7) and a dangerous drug pursuant to Business and Professions Code
9 section 4022.

10 15. Tramadol is a dangerous drug pursuant to Business and Professions Code section
11 4022.

12 16. Gabapentin is a dangerous drug pursuant to Business and Professions Code section
13 4022.

14 FIRST CAUSE FOR DISCIPLINE

15 (Diversion of Narcotics)

16 17. Respondent is subject to disciplinary action under section 2761, subdivision (a),
17 and 2762, subdivision (e), in that on or around December 22, 2010, while on duty as a registered
18 nurse at Providence Holy Cross Medical Center (PHCMC), Respondent removed three 1 mg
19 doses of hydromorphone for the same patient but only documented the administration of a single
20 dose. Respondent failed to document wastage or otherwise account for the remaining two doses.

21 SECOND CAUSE FOR DISCIPLINE

22 (Conviction of Crime)

23 18. Respondent is subject to disciplinary action under Code sections 490 and 2761,
24 subdivision (f), in that on or about November 23, 2011, Respondent was convicted of one
25 misdemeanor count of violating Vehicle Code section 23152(a) (Driving Under the Influence of
26 Alcohol or Drugs) in the Superior Court of California (County of Los Angeles), in a case entitled
27 *People of the State of California v. Cynthia Lynn Hess* (Case No. MA054439.) The facts and
28 circumstances underlying the conviction are that on or around August 5, 2011, California

1 Highway Patrol Officers observed Respondent operating a motor vehicle in an erratic and
2 dangerous manner and initiated a traffic stop during which she was observed to have slurred
3 speech and blood shot eyes. As a result, Respondent was asked to undergo a series of field
4 sobriety tests, which she performed in a manner consistent with drug impairment. Following
5 Respondent's arrest and an inventory search of her vehicle, officers found a bag containing 9
6 Oxycontin pills, 8 hydrocodone pills, 36 Tramadol capsules, 7 Gabapentin capsules, and 5
7 Clonazepam tablets. Respondent conceded to arresting officers that with the exception of the
8 Gabapentin capsules, all of the drugs found in the vehicle belonged to her and that she did not
9 have corresponding prescriptions.

10 THIRD CAUSE FOR DISCIPLINE

11 (Illegally Obtain / Possess Controlled Substances / Dangerous Drugs)

12 19. Respondent is subject to disciplinary action under sections 2761, subdivision (a), and
13 2762, subdivision (a), on the grounds of unprofessional conduct as follows:

14 a. While employed as a registered nurse at PHCMC, Respondent obtained or possessed
15 three 1 mg doses of hydromorphone despite the fact that physician orders in place called for a
16 single dose as more fully described in paragraph 17 above, which is incorporated herein by
17 reference.

18 b. On or around August 5, 2011, Respondent possessed narcotic substances without a
19 corresponding prescription as more fully set forth in paragraph 18 above, which is incorporated
20 herein by reference.

21 FOURTH CAUSE FOR DISCIPLINE

22 (Conviction Involving the Consumption of Alcohol/Drugs)

23 20. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
24 and 2762, subdivision (c), in that on November 23, 2011, Respondent was convicted of a criminal
25 offense involving the consumption of alcohol and/or drugs, as more fully set forth in paragraph
26 18 above, which is incorporated herein by reference.

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28 ///

1 FIFTH CAUSE FOR DISCIPLINE

2 (Dangerous Use of Controlled Substances)

3 21. Respondent is subject to disciplinary action under Code sections 2761, subdivision
4 (a), and 2762, subdivision (b), in that Respondent used alcohol and/or drugs to an extent or in a
5 manner dangerous or injurious to herself or others, as more fully set forth in paragraph 18 above,
6 which is incorporated herein by reference.

7 PRAYER

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:

- 10 1. Revoking or suspending Registered Nurse License Number 599307, issued
11 Respondent;
12 2. Ordering Respondent to pay the Board of Registered Nursing the reasonable costs of
13 the investigation and enforcement of this case, pursuant to Business and Professions Code section
14 125.3;
15 3. Taking such other and further action as deemed necessary and proper.

16 DATED: September 4, 2012

17 Stacie Ben
18 for LOUISE R. BAILEY, M.ED., RN
19 Executive Officer
20 Board of Registered Nursing
21 Department of Consumer Affairs
22 State of California
23 Complainant

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